

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KAREN J. BALCOMBE,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner,  
Social Security Administration,

Defendant.

CASE NO. C10-5302RBL-JRC

ORDER

THIS MATTER comes on before the above-entitled court upon Plaintiff's Petition for Attorney Fees [Dkt. #28]. Having considered the entirety of the records and file herein, the Court finds and rules as follows:

Plaintiff seeks attorney fees of \$6,322.79 and costs of \$350.00 pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). The Government objects to an award of fees and costs as untimely. The Plaintiff responds that she provided a timely application to the Office of General Counsel in a timely fashion, and thus she is entitled to fees pursuant to 5 U.S.C. § 504(a)(2).

Plaintiff's argument is without merit. The EAJA provides that "A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the

1 court an application for fees and other expenses . . .” 28 U.S.C. § 2412(d)(1)(B). Plaintiff  
2 admits that her petition for fees to this Court is not timely. The petition specifically requests fees  
3 under 28 U.S.C. § 2412(d), it does not request fees pursuant to 5 U.S.C. § 504(a)(2).

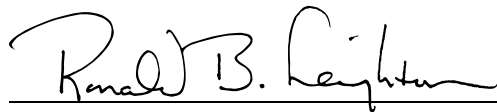
4 The thirty day time limit in the EAJA is not jurisdictional; however, it is a waiver of  
5 sovereign immunity and should be narrowly construed. *Arulampalam v. Gonzales*, 399 F.3d  
6 1087, 1089 (9<sup>th</sup> Cir. 2005) (denying EAJA fees as untimely where the application for fees was  
7 mailed, but not filed, within 30 days). Narrowly construing the petition for fees, which was filed  
8 pursuant to 28 U.S.C. § 2412(d), and was filed 15 days late, compels this Court to deny the  
9 petition for fees and costs.

10 Plaintiff’s Petition for Attorney Fees and Costs [Dkt. #28] is **DENIED**.

11 **IT IS SO ORDERED.**

12 The Clerk shall send uncertified copies of this order to all counsel of record, and to any  
13 party appearing pro se.

14 Dated this 6<sup>th</sup> day of October, 2011.

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17 RONALD B. LEIGHTON  
18 UNITED STATES DISTRICT JUDGE  
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